IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.1735 of 2007
with
Civil Application No.3054 of 2007

1. M/s Dhanraj Developers ..Petitioners

vs.

1. Yamuna Dattu Naik
deceased through legal
heirs and others ..Respondents

Shri A.A.Joshi i/b Shri U.P.Warunjikar for petitioners.
Shri Shri G.S.Godbole i/b Shri Vijay Gharat for respondent nos.1a and 1b.
Shri V.Z. Kankaria i/b Shri S.A.Joshi for respondent no.2.

CORAM: S.C.DHARMADHIARI J.
7th December, 2007

P.C.

1. The present petitioners had filed a civil suit in the Trial Court being Reg. Civil Suit claiming a relief that the agreement dated 2nd March, 2005 between the petitioners/plaintiffs and respondent nos.1a,1b and 2 is valid, subsisting and binding. The said agreement is in respect of immovable property and the City Industrial Development Corporation Ltd. was also impleaded as a party. CIDCO was impleaded as a party because the CIDCO had agreed to allot a piece and parcel of land, more particularly, described in para 3 of the plaint by its order dated 8th February, 2005. The petitioners/plaintiffs state that other

defendants were to take over this plot from CIDCO and thereafter transfer it to the petitioners/plaintiffs and that is how the agreement was executed on 2nd March, 2005. Consideration was also agreed. A sum of Rs.2,50,000/- has been paid and thereafter the petitioners had set out as to how steps were taken to have the property/land allotted. The consideration which was agreed upon has been referred to and plaint proceeds to state that a sum of Rs.8,56,000/- has been paid.

2. When this plaint was presented in the civil Court, it appears that an objection was raised with regard to valuation of the suit claim for the purpose of court fees and jurisdiction. The Registry was of the opinion that the property has been valued at Rs.16,00,000/- and if the declaration with regard to the same has been claimed, then, the court fee is required to be paid on Rs.16,00,000/- and if such court fee is paid, then, further steps would be taken.

3. The petitioners pointed out to the Court below that the claim is traceable to section 6(i)(j) of the Bombay Court Fees Act, 1959 and that is how the Court fees have been paid. The argument was that appropriate court fee has been

paid. The grievance of the present petitioner is that the order has been passed by the Trial Court and result of the said order is that neither the plaint is taken on file nor such enquiry as is necessary in law with regard to undervaluation allegedly made has been commenced. The net result of all this is that if the petitioners do not comply with the order of the Trial Court, they will not be able to proceed with the suit and file any application including for interim injunction. In such circumstances, the order of the learned Judge directing payment of the Court fee has been assailed before me.

4. This petition was placed before this Court earlier and while issuing notice this Court granted ad-interim relief.

5. After this matter was heard for some time and my attention was invited to the provisions of the Bombay Court Fees Act, 1959, I expressed a view that the issue of valuation of the suit claim for the purpose of court fees and jurisdiction can be kept open and subject to such an issue being kept open, for being raised at the appropriate stage, the Trial Court should proceed to take the plaint on file and number

it. The parties agreed before me to such a course of action. In sofar as ad-interim order is concerned, the prayer of the petitioners/plaintiffs is that such an order be continued for reasonable period so as to enable the petitioners/plaintiffs to apply for appropriate relief in terms of the plaint averments.

6. The respondents' Counsel Shri Godbole and Shri Kankaria raised an issue with regard to this Court granting such a relief as an ad-interim measure straightway. They pointed out that this Court cannot take over the power of the Trial Court during the course of hearing the petition under Article 227 of the Constitution of India challenging the order of the present nature, no question of granting any interim order on merits arises. Prima facie, there is substance in the contention of Shri Godbole and Shri Kankaria, however, without entering into any larger controversy and since all the issues have been kept open, in my view, following order would meet the ends of justice.

7. The order dated 9th March, 2007 passed by the learned Civil Judge, Sr.Dn.,Panvel is quashed and set aside. The plaint is directed

to be registered and numbered subject to the objection with regard to the valuation of the suit claim for the purpose of court fee and jurisdiction be kept open. The order being quashed and set aside does not prevent the Trial Court from taking cognisance of the objections in that behalf and passing appropriate orders in that behalf after giving an opportunity to the petitioners/plaintiffs.

8. Instead of the ad-interim order passed by this Court being continued, I record the statement of Shri Godbole and Shri Kankaria to the effect that defendant no.1a and 1b and 2 shall not create any third party rights in respect of the suit property for a period of 10 days from today. The Trial Court should decide the proceedings including the interim application uninfluenced by the fact that ad-interim order was passed by this Court and the statement as above made by the respondents. All this shall not influence the Court below in any manner. Petition is disposed of. This order is passed in presence of respondent no.2. All contentions on merits are kept open.

9. In view of disposal of the petition civil application does not survive and stands disposed

off. No costs.

(S.C.DHARMADHIKARI J.)